IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, CIVIL JURISDICTION

FIRST APPEAL NO.47 OF 1991

The State of Maharashtra
(at the instance of the Special
Land Acquisition Officer Raigad-Alibag)..... Appellant.

Versus

Prakash Vasudeo Deodhar
(age 37 years, Occupation-
Agriculturist, residing at
plot no.22,Middle Class Housing
Society,Panvel, Raigad). ..... Respondents

Shri A.R.Patil, AGP for the Appellant.

Sarvasri Rajendra Pai with S.M.Kamble, Advocates for Respondents.

WITH

FIRST APPEAL NO.120 OF 1991

Shri Prakash Vasudeo Deodhar
(age 37 years, occupation-
agriculturist, residing at plot
No.22, Middle Class Housing Society
Panvel, District-Raigad). ..... Appellant
[Original Claimant]

Versus

The State of Maharashtra
(at the instance of Special Land
Acquisition Officer, Raigad,Alibag) .....Respondents.
[Original Opponent]

Sarvasri Rajendra V.Pai with S.M. Kamble, Advocates for Appellant.

Shri A.R. Patil, AGP for Respondents.

CORAM: R.M.S.KHANDEPARKAR &
V.M.KANADE,JJ.
DATE :15TH SEPTEMBER 2005.

ORAL JUDGEMENT (PER R.M.S.KHANDEPARKAR,J):

1. Since both the appeals arise from the same award passed by the Reference Court, and the matter involves common questions of law and facts, they were heard together and are being disposed off by this common Judgement.

2. First Appeal No.47 of 1991 is by the State of Maharashtra, whereas First Appeal No.120 of 1991 is by the claimant, both dis-satisfied by the award dated 30th September 1989 passed by the Civil Judge, Senior Division, Raigad at Alibag in Land Acquisition Reference No. 5 of 1986 have preferred these appeals.

3. The land in question was sought to be acquired,for the purpose of water supply arrangement for Nhava-Sheva Sub-region, by issuing Notification dated 13th December 1984 under Section 4 of the Land Acquisition Act, 1894,(hereinafter called as ‘‘the said Act’’). The declaration under section 6 was issued on 6th June 1985

which was followed by necessary notice under Section 9 of the said Act. After hearing the parties, the award was declared by the Land Acquisition Officer under Section 11 on 25th September 1985. Pursuant to the communication of the award by the notice under Section 12(2) of the said Act which was served upon the claimant on 18th October 1985, the claimant sought reference under Section 18 of the said Act on the ground that compensation awarded was much below the market value of the land acquired.

4. The land acquired bears Gat No.66/2, 66/3, 66/4-A and 66/4-B and 92/O and admeasured 2 hectares and 19 ares out of which 30.9 ares was in relation to the Gat No.92 and remaining was in relation to Gat No.66. Under matric system of measurement, the acquired land admeasured 7590 sq.mtrs. and remaining land of claimant was 14350 sq.mtrs. The claim of compensation was not only in relation to the acquired land but also in relation to the remaining land on the ground of loss suffered on account of acquisition of part of land of the claimant and as being severance charges. The Land Acquisition Officer had awarded compensation at the rate of 3.65 per sq.mtr. for an area of 3400 square metres, Rs.0.02 paise per sq.mtr. for an area of 300 square metres, and Rs.3.20/- per sq.mtr. for an area of 3840 square metres and

remaining area at the rate of 0.02 paise. Thus, the total compensation which was awarded was of Rs.24,705/-. After deducting Nazrana charges, the amount which was offered as compensation was Rs.24,439/- for total area of 7590,excluding other statutory benefits. The claimant in the reference application had claimed sum of Rs.60/- per square metre as the market value for acquired area as well as severance charges in relation to balance area. The reference court awarded compensation at the rate of Rs.35/- per square metre in relation to acquired land as well as Rs.35/- per sq.mtr. as the severance charges in relation to balance area of claimant's property, apart from other statutory benefits.

5. The challenge to the impugned award on behalf of the State is on the ground that the evidence led by the claimant does not justify the rate of compensation awarded by Reference Court and that the same has been granted completely ignoring the provisions of Section 24 of the said Act and the fact that the land was subjected to the restrictions under the Bombay Tenancy And Agricultural Act 1948, hereinafter called as ''the Tenancy Act''. The reference court failed to consider the fact that claimant did not produce any cogent evidence in the form of Sale Deed or any award of

reference court in relation to land in the vicinity which could be comparable with the land in question and enhancement is granted purely on surmises. The reference court failed to take into consideration statutory obligations and restrictions imposed upon by the reference court while evaluating the market value of land acquired under the said Act.

6. The impugned award is sought to be challenged by the claimant on the ground that reference court failed to take into consideration the well established criteria to be applied for the purpose of evaluating market value of the land acquired, ignoring material evidence placed on record by the claimant in support of his claim for Rs.60/-per square metre for the acquired land as well as towards the severance charges. The award in Land Acquisition Reference No.447 of 1987 placed on record at Exhibit 21 clearly discloses that the land in the neighbourhood was awarded Rs.35/- per square metre and the same was clearly comparable land with the land in question. Besides the said acquisition was hardly two years prior to the date of acquisition of the land in question. Taking the judicial notice of the fact that there is always upward trend in the land prices, besides that the land in question is near to the highway, the

reference court ought to have awarded at least Rs.50/- per sq.mtr. if not Rs.60/- while applying the same criteria in relation to severance charges. While considering the market value of the land, fullest exploitation of all the possible available potentialities of the land in question is to be considered and that is not only the statutory obligation of the reference court under the provisions of the said Act but also a mandate of Article 31.C of the Constitution of India. Section 32(G) encumbrance in terms of provisions of the Tenancy Act can not be of any assistance to the State to justify reduction in the value of the land as the valuation has to be based on consideration of potentialities of the land on the date of issuance of Notification under Section 4 and which could be exploited by a willing purchaser. Considering the same, merely because the land was originally subjected to use of agriculture, that by itself cannot be a criteria to decide the market value for the purpose of deciding the compensation under the said Act. Attention was sought to be drawn to the pleadings in the reference application as well as to the testimony of the claimant and his valuer while arguing that there has been no substantial challenge to the pleadings and the evidence led by the claimants through himself as well as through his valuer, clearly

establishes the market value of the land as claimed by the claimant.

7. Before considering rival contentions and the issue as regards the market value of the land, certain facts which are either undisputed and/or clearly disclosed and established from the records need to be recorded. The land in question which was acquired was purchased by the claimant under the two registered Sale Deeds dated 16th May 1981. The land bearing Gat No.66/4-B and 92/O alongwith Gat No.79/12 was purchased from one Laxman Mahadu Nigrose and the land bearing Gat No.66/4-A was purchased from Barku Laxman Sache . As regards land bearing Gat No.66/4-B and 92/O purchase was consequent to the permission granted by the Assistant Collector,Panvel under Section 43 of the Tenancy Act and Rule 25 (1)(i) of Bombay Tenancy Act and Agriculture Land Rules 1956 (hereinafter called as ‘‘the Tenancy Rules’’). As regards land bearing Gat NO.66/4-A permission under Section 43 of Tenancy Act read with the Tenancy Rules was granted on 31st January 1981 by the Assistant Collector, Panvel. The claimant under his application dated 2nd January 1985 applied for conversion of land to non agriculture use in relation to Gat No.92/O as well as other land bearing Gat No.66/2, 66/3, 66/4-A and 66/4-B.

Both these applications were allowed by the Tehsildar, Panvel on 8th April 1985.

8. In the facts and circumstances of the case and rival contentions sought to be advanced in the matter the first point which arises is whether the Reference Court while ascertaining the market value of an agricultural land acquired under the said Act has to take into consideration the provisions of the Tenancy Act and Tenancy Rules as applicable to such land on the date of issuance of Notification under Section 4 of the said Act.

9. Section 23 of the said Act enumerates the factors which are required to be considered for determining compensation whereas, Section 24 enumerates the factors which are not to be considered in determining the compensation. Perusal of Section 23 of the said Act, therefore, reveals that the damage spoken of is not of general in nature but in relation to specified items enumerated thereunder. It does not refer to any loss or damage in general which such person may likely to suffer after publication of declaration under Section 6 or any increase in the value of land which is likely to accrue from the use to which it could be put to after acquisition. Section 6(3) of the said Act specifically

provides that the declaration issued thereunder would be a conclusive evidence of the fact that land is needed for public purpose. Even otherwise, any improvement made or changes brought about in the land under acquisition subsequent to publication of Section 4 notification cannot be taken into consideration for the purpose of evaluating the market value of the land.

10. The Tenancy Act clearly provides that any transfer of agricultural land which is subject to the provisions of the Tenancy Act and/or is purchased by the tenant in terms of provisions of Tenancy Act, cannot be conveyed in favour of third person in any form without prior sanction of Collector and further that Collector is empowered to grant sanction subject to such conditions as are enumerated under various provisions of Tenancy Act and those as may be prescribed by the State Government. It specifically provides that, any transfer made without such sanction would be invalid. In fact Chapter III to Chapter V of Tenancy Act refer to various restrictions for such transfer of agricultural land, including change of use thereof.

11. In the case in hand it is not in dispute that the land was an agricultural land and was purchased by

claimant from the tenant thereof and that the same was subjected to the restrictions imposed under the Tenancy Act. The claimant had obtained sanction from the Collector for the said purchase under letters dated 3rd January 1981 which disclose conditions subject to which sanction was granted and they include the conditions to the effect that the applicant-purchaser should use the lands for agriculture purpose only, **that** applicant-purchaser should not transfer sale, gift, exchange, mortgage,lease or assignment disposed off lands or part thereof without previous permission of Assistant Collector, Panvel, District Panvel, and that the breach of any of the conditions would result in cancellation of this permission and action would be taken in accordance with the provisions contained in Section 84 (CC) of Bombay Tenancy & Agricultural Lands Act 1948. The fact of purchase being made consequent to the sanction granted under Section 43 has also been recorded in the sale deeds by which the land in question was purchased by the claimants.

12. It is the contentions of the learned advocate for the claimants that restrictions imposed under Tenancy Act would not be relevant for the purpose of determining market value of the land under the said Act. Undoubtedly

the reference court is guided by the provisions of Sections 23 and 24 of the said Act in the matter of fixation of market value of the land acquired. Though provisions comprised under Sections 23 and 24 may appear to be in the nature of guide-lines for evaluating market value, both the provisions mandate certain conditions which are necessarily to be considered for the purpose of calculating market value and at the same time certain things should not be allowed to influence such valuation of the land acquired. Section 24 clearly requires the Court to refrain itself from considering the factors like the improvements which the claimant may make or cause to make in the land after notification under Section 4 without the necessary sanction from competent authority, and damage which claimants may suffer after publication of declaration under Section 6, as also increase in value likely to accrue from the use to which the land could be put after acquisition. Further, the eighth clause of Section 24 specifically provides that, the reference court shall not take into consideration any increase to the value of the land acquired on account of its being put to any use which is forbidden by law or opposed to public policy, while fifth clause precludes the reference court from taking into consideration any increase to the value of the land likely to accrue from the use to which

it will be put when acquired.

13. The Tenancy Act is an agrarian reform as well as beneficial legislation to provide an effective measure to ensure security to the agricultural tenants, not only in respect of their obligation to pay the rent but also regarding ownership rights over the land under their cultivation, albeit subject to conditions and limitations. It is not transformation of mere ownership from one clan of people to others. It is essentially in the best interest of down trodden people. Simultaneously, it seeks to discourage activities harmful and injurious to the agricultural lands and the agriculture in general. The Section 43 and 63 of the Tenancy Act have been obviously enacted bearing in mind public policy involved in bringing into force tenancy legislation and for effective implementation of the principle of ‘‘land to the tiller.’’ It also reveals policy to discourage unmindful utilisation of agricultural land for non agricultural purposes.

14. Bearing in mind provisions of Tenancy Act, restrictions imposed against the use of land for any purpose other than agriculture to which provisions of Tenancy Act apply, the legislative intent and public

policy behind various provisions of Tenancy Act, statutory norms laid down under sections 23 and 24 for the purpose of evaluating market value of acquired land and the well established principles of law relating to assessment of market value of land to be acquired, inevitable conclusion to be drawn is that in cases where the land has been subjected to the provisions of Tenancy Act, unless conversion for the use of such land has been obtained prior to issuance of notification under Section 4, from the competent authority in due compliance of the provisions of the Tenancy Act while ensuring that such permission does not defeat the object of the Tenancy Act and is not contrary to public policy and unless this aspect is clearly established by the evidence led by the claimant, such lands are to be considered as the agriculture land for the purpose of calculating market value of such land as on the date of issuance of notification under section 4. It should not be understood that for the purpose of valuation invariably non agricultural potentialities of the land are to be totally ignored. However, while arriving at the market value of such land which is subject to the restrictions imposed under the Tenancy Act, the same being in force and in existence on the date of issuance of Section 4 notification, should not be ignored.

15. The Apex Court in the case of **Saraswati Devi and others Vs. U.P.Government and another reported in 1993 Supplement (1) Supreme Court Cases 569** has clearly held that the market value will be determined according to the use to which land was put on the date of notification under section 4 of the Act. Similarly, in **State of H.P. versus Tarsem Singh & Others reported in (2001) 8 SCC 104,** it has been held that the word ‘‘encumbrance’’means a burden or charge upon property or a claim or lien upon an estate or on the land. ‘‘Encumbrance’’ means burden of legal liability on property, and, therefore, when there is encumbrance on a land, it constitutes a burden on the title which diminishes the value of the land. A legal liability would be one which the courts recognize and can be enforced as between the parties.

16. The function of the court in awarding compensation under the said Act is to ascertain the market value of the land at the date of notification under section 4(1) of the said Act. The Apex Court as long back as in the year 1958 in the matter of **The Special Land Acquisition Officer, Bangalore versus T. Adinarayan Setty reported in A.I.R. 1959 Supreme Court 429 (V 46 C 53)** had held that, the method for ascertaining market value of the

land which is the subject matter of acquisition under the said Act would include consideration of opinion of experts, price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages and a number of years purchase of the actual or immediately prospective profits of the lands acquired but are ignored extensively. Considerations, such as purpose for which land is acquired, report of its authorities about suitability and unsuitability of the land for the purpose for which it is acquired and delay in putting the land for the use for which it is acquired, are of no consequence for the purpose of ascertaining market value of the land acquired. The most important point which is laid down for the purpose of evaluating market value is the profitability from the land in question through the interested person as on the day of issuance of notification under section 4 of the said Act and not any other day thereafter. The said law laid down on the point in issue holds the field till this day.

17. It is equally true that the potentialities of the land is one of the factors to be considered while ascertaining market value of the land. However, potentiality factor will have to be considered from both

aspects-factual as well as legal, and with reference to the date of issuance of notification under Section 4 of the said Act. While it would be necessary to ascertain the nature of land and various uses to which it is capable of being put to and to be exploited, at the same time one should not ignore factual and legal impediment attached to the land for such varied exploitation thereof. Ignoring such factual and legal impediment will lead to absurd conclusions in relation to the market value of such land. The very concept of the potential value implies evaluation of existing possibilities and not the consequences of future acts. In other words, the land has to be considered as capable to be used in future in the existing conditions, as was held by the Apex Court in **State of Orissa Versus Brij Lal Mishra etc. reported in AIR 1996 SC 221.** Evidently, the statute expressively enjoins to omit consideration of the future use of the land or potentialities of the neighbouring lands on account of the acquisition in determining compensation.

18. The market value of a land is the price which normally willing purchaser would prefer to offer for purchase of that land. Can it be believed, by any stretch of imagination, that a person would offer a price that is normally offered for a land suitable for

construction activity to a land which is subject to various statutory restrictions as regards its use for any purpose other than for agriculture ? Will it not be purely wishful thinking, far from reality ?

19. **In Bhim Singh versus State of Haryana reported in AIR 2003 SC 4382** it was held that, ‘‘What price is fetched after full development cannot be the basis for fixing compensation in respect of land which was agricultural.’’

20. **In Kasturi and others versus State of Haryana reported in (2003)1 SCC 354** it was held that, ‘‘A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; may be the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his land is a

developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character of a developed area.'' The Apex court has also drawn attention to the fact that '' there is a difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot.''

21. **In Vakratunda Chintaman Deo versus Special Land Acquisition Officer, Poona reported in AIR 1960 Bombay 232** it was held that, The circumstance that the land under acquisition may be put to non-agricultural use after it is acquired by the State has to be ignored under Section 24 and compensation cannot be awarded to the claimant on that ground. Unless the conversion was sanctioned by the Collector the non agricultural user could not be made and assessment on that basis could not be claimed by the claimant.

22. **In O.Janardhan Reddy and others versus Special Deputy Collector, L.A.Unit-IV,LMD, Karimnagar, A.P. and**

others reported in AIR 1995 Supreme Court 186 it also held that when agricultural lands are acquired under the Act, the owners of such lands or persons who have interest in them become entitled to payment of compensation awardable for such lands under the Act. The main component of such compensation would be the market value of the acquired agricultural land. Market value of agricultural land has to be determined under the Act with reference to the date on which preliminary notification was published in the State Gazette proposing its acquisition and according to the price which a buyer interested in agriculture would have paid for it to the owner having regard to its soil, the irrigation and other facilities, it commanded for its maximum utilisation for agricultural purposes. The Apex Court has also dealt with the factors which should weigh in evaluating the market value of an agricultural land.

23 To overcome the difficulty in getting higher compensation for agriculture land which is subject to restrictions under Tenancy Act, Gujrat Government has brought into force a legislation called Land Acquisition Gujrat Unification & Assessment Act, 1965 whereby Section 23 of the said Act was sought to be amended by adding

following clause thereto:-

> ‘‘In the case of any land which according to the terms of tenure on which it is held is not transferable or partible by metes and bounds without the sanction of the State Government or any competent officer, the market value of such land held without restrictions.’’
>
> (Vide: Hamidkhan Samsherkhan & etc. versus Special Land Acquisition Officer,Broach & etc., AIR 1982 Gujrat 157)

There is no such provision in force in the State of Maharashtra.

24. Reverting to the facts of the case in hand, and taking into consideration provisions of Section 43 of the Tenancy Act, the legislative intent behind the said provision , sanction granted for the sale of land in favour of claimant under orders dated 3rd January 1981 incorporating and attaching certain conditions for such sale and regarding the use and enjoyment of the land in question by the purchaser, it is apparent that on the date of issuance of notification under Section 4 i.e. 13th December 1984 the land in question continued to be agricultural land and further the claimant was precluded

from using or utilising the land in question for any purpose other than agriculture. There was also specific restriction for transfer of such land in any manner without prior sanction. In other words, the land in question, though, was available for private ownership in December 1984, it was subject to strict conditions regarding its utilisation as the agricultural land and prohibiting the use thereof for any other purpose and also for its transfer without prior sanction.

25. There is no doubt that on 8th April 1985, the claimant got necessary permission from Tehsildar for conversion of land in question from agricultural to non agricultural use. Perusal of the said permission letter dated 8th April 1985 also discloses that the same was granted bearing in mind provisions of Tenancy Act and the rules made thereunder. However, one relevant factor which is noticed in both these letters is that the applications for conversion of use of land from agriculture to non agricultural were filed only on 2nd January 1985 i.e. after issuance of notification under Section 4 in the case in hand. As already seen above the statutory provisions of law empowering the reference court to give the market value of land do not permit to take into consideration increase in value of land to

which it can be put to use after its acquisition. It also forbids taking into consideration increase in the value of land when such use is forbidden by law. Perhaps the contention that such increase in value on account of permission having been granted for non agriculture land might have been of some relevancy if such permission was obtained prior to issuance of notification under Section 4, however, we are not concerned with that situation in this matter. Once intention of the Government was clear that the land was to be acquired while it was being subjected to certain restrictions about its use as the agricultural land and for no other purpose, and only after such intention to acquire was made clear, the claimant sought to change the use of land, in such circumstances merely because the permission for change in user of land was granted, it would not be of any help to the claimant; it is more so when such permission is applied for after issuance of notification under Section 4 of the said Act and on that count also the permission appears to have been granted opposed to public policy. Undisputedly, the land was subjected to provisions of Tenancy Act. The conveyance thereof was permitted subject to provisions of the said Act. Apart from bare observation by the Tehsildar that permission for conversion has been granted within the provisions of

Tenancy Act, there is no disclosure as to how such conversion was in consonance with public policy which was sought to be attained by the provisions of Tenancy Act. Being so, consideration of such permission for conversion in evaluating the market value would not be permissible as it would be squarely hit by the restrictions imposed under the statutory provisions of law relating to the methodology to be adopted for ascertaining the market value and particularly 8th Clause of Section 24 of the said Act.

26. Undoubtedly, the claimant could have led evidence to establish the fact that such permission was not opposed to public policy and that the same was granted after consideration of all relevant factors which are required to be considered in terms of provisions of Tenancy Act. Undisputedly, no such evidence was led. Mere failure on the part of the State to raise specific defence in that regard will be of no benefit to the claimant to contend that there was no such obligation on the part of the claimant to establish the same. It is well settled law that in case of reference under section 18 of the said Act, the entire burden to establish the claim for enhancement of the compensation lies upon the claimant and no amount of weakness on the part of the

defence by the State or failure on the part of the government pleader to defend the case effectively could benefit the claimant in any manner. The Apex Court in **P Ram Reddy and others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and others reported in 1995(2) Supreme Court Cases 305** dealing with the issue relating to failure on the part of the Collector or the State to take effective steps to cross examine the witnesses on behalf of the claimant and taking note of the fact that in the land acquisition references before civil court when the witnesses give oral evidence in support of claimants for higher compensation, the ineffective cross examination of such witnesses is not a uncommon feature, while reiterating its earlier decision in the matter of **Chaturbhuj Pande & others Versus Collector Raigarh reported in 1969 SC 255** held that, such circumstances does not bind the court to accept the evidence of claimant, even in absence of rebuttal thereof. It was also held that Judges are bound to call into aid their experience of life and as Judge of fact it in open to the appellate Judge to test the evidence placed before him on the basis of probabilities and to reject the same if found to be unreliable. It was held that, ‘‘if the courts were to accept such statements of witnesses as true merely because they are not

subjected to cross examination or effective cross examination or because evidence in rebuttal thereof has not been adduced, it would amount to doling out public money to the claimants far in excess of their legitimate entitlement for just compensation payable for their lands. If such situation is prevented by courts dealing with claims for compensation by testing the statements of witnesses for claimants on the basis of probabilities, the courts will have performed the duty justly expected of them. Hence no court which tests the oral evidence of the claimants on the touchstone of probabilities calling into aid, its experience of life, men and matters and find such evidence to be untrustworthy, the same cannot be found fault with.''

27. Mere production of order granting permission of conversion of use of land by the authority will not prove that, such order was passed either after taking into consideration all factors which were required to be considered by such authority in accordance with the provisions of Tenancy Act or that the care was taken to ensure that such permission would not be opposed to public policy. Consideration of these factors would not be mere reproduction of the phrase that 'all factors were considered before granting the permission' but the order

on the face of it should disclose that each of such factors were in fact considered and dealt with. When the order itself does not disclose on the face of it that such factors were in fact considered, it would be the duty of the claimant to lead cogent evidence in that regard and establish such factors having been considered in a given case. In the case in hand as already seen above, apart from production of sanction order, no other evidence is available on record to disclose that the concerned authority had taken into consideration all the factors including the factor that grant of permission for the non agricultural use of land after issuance of notification under Section 4 of the Act, would be opposed to public policy. The permission granted nowhere discloses application of mind to the fact that the application was filed after issuance of notification under Section 4 of the said Act. In our considered opinion, grant of such permission in relation to land which is the subject matter of provisions of Tenancy Act and that too after issuance of Notification under section 4 of the said Act, would disclose failure on the part of the authority to take into consideration relevant factors including the factor that grant of such permission would be opposed to public policy.

28. It is also pertinent to note that the land in question was purchased by the claimant under Sale Deed dated 16th May 1981 consequent to permission granted under section 43 of the Tenancy Act for utilisation of the land only for the purpose of agriculture. No other use thereof was specifically permitted. It is not the case of the claimant that at any point of time from the date of purchase of land till the issuance of Notification under section 4, that there was any permission granted by the competent authority to use the land for any other purpose or even the intention on the part of the claimant having being disclosed by way of any documentary evidence to the effect that claimant had intended to use the land in question for any purpose, other than for agriculture. It was only after publication of notification under section 4 and in January 1985 that for the first time attempt was made by the claimant to seek conversion of land for the use other than agriculture. All the above factors, therefore, clearly disclose that the so called conversion of land which was sought to be obtained in April 1985, was merely with intention to claim higher amount of compensation in relation to land sought to be acquired.

29. It is not the case of the claimant that pursuant

to permission being obtained for conversion of land for non agriculture purposes, area which was left out was in any manner utilised by the claimant for non agricultural purposes. We are aware that the claimant claims to have rendered remaining land to be useless. We will deal with the said aspect while dealing with the case for severance charges. But the fact remains that the land admeasuring more than 14000 sq.mtrs in area was available to the claimants if he really desired to develop the same.

30. There is nothing on record to disclose that remaining land in respect of which conversion into non agriculture use thereof was sought for, was actually used for any purpose other than agriculture. It is pertinent to note here that such conversion in use of land was applied for the first time only after issuance of notification under Section 4 of the said Act i.e. only after the intention of the State to acquire an area of 7590 sq.mtrs. out of total area of 22300 sq.mtrs. of the petitioner’s land was made clear.

31. For all the reasons stated above, therefore, contention on behalf of the claimant that provisions of Tenancy Act and encumbrances in the form of section 32(G) of the Tenancy Act is to be totally ignored while

ascertaining market value of land in question cannot be accepted. On the contrary provisions of Tenancy Act will have to be borne in mind and agricultural use to which the land was put to and subjected to certain restrictions under Tenancy Act for the non agricultural use thereof has to be considered as the said use and restrictions continued to be there even on the date of issuance of notification under section 4 of the said Act.

32. Next point which arise for consideration relates to severance charges. It is the case of the petitioner that though the acquired land admeasures 7590, balance of area of 14350 had been rendered useless and therefore, the claimant is entitled to severance charges in relation to area of 14350 at the same rate at which compensation is sought to be awarded for the acquired land. It is pertinent to note that the land which is acquired is 7590 whereas the severance charges are sought to be claimed in relation to area almost double the acquired land.

33. Drawing the attention to the pleadings in reference application, learned counsel for claimant submitted that it was specifically pleaded in the said application that on account of acquisition of 3700 from Gat no.66, area which is left out forms a narrow strip of

land and therefore, severance charges at the same rate at which compensation is claimed for the acquired land should be awarded. According to the learned advocate those pleadings were not denied or disputed in the written statement filed on behalf of the respondent State. Further drawing attention to the testimony of claimant , the learned advocate submitted that it was specifically stated by the claimant that opponent had acquired part of his land and therefore, he had requested either to acquire the whole land or to release the entire land. The opponent refused to release the land. So the remaining portion which is in his possession has been rendered useless. He further submitted that the said statement was neither denied nor challenged in the course of cross examination. Further referring to the testimony of valuer on behalf of claimant attention was drawn to the part of his testimony where it was stated by the valuer that because of some restrictions, there was heavy demand for residential lands within the radius of 200 mtrs. from the Gaothan area. Further the claimant had prepared lay out plan of the land in question and had planned to have the residential scheme, but due to present acquisition area admeasuring 3700 square metres has been taken away leaving 14350 sq. metres with the owner making his residential scheme unviable and non

marketable and therefore, market value of Rs.70/- per sq.mtr. should be awarded. In this regard it is also submitted that apart from suggesting that no damage had resulted due to severance of the acquired land, testimony of valuer was neither challenged nor shaken in any manner in the course of cross examination. Third clause of Section 23(1) of the said Act relates to damage sustained by the person interested, at the time of Collector's taking possession of the land, by reason of severing such land from his other land and fourth clause thereof relates to the damage sustained by the person interested , at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable,in any other manner, or his earnings.

34. As regards severance charges which are spoken of in terms of section 23(1), undoubtedly the claimant has to establish the facts justifying such claim. As rightly submitted by the learned advocate for claimant it is essentially for the claimant to establish that there has been damage or loss sustained on account of such severance. The claimant can also establish loss suffered on that account. However, before quantifying any claim in that regard, the claimant has to lay down factual

foundation in his pleadings for such claim. Unless the basic facts disclosing damage and consequential loss are pleaded and then established by cogent evidence in that regard, no fault can be found even if reference court does not grant compensation towards severance charges. Mere statement that remaining land is rendered narrow strip of land and therefore, is of no use to the claimant can not constitute sufficient material regarding the 'damage' within the meaning of the said expression under section 23 for the purpose of claim of severance charges. In the case in hand apart from mere claim for severance charges there is absolutely no evidence in support thereof produced on record. The claimant has not taken any pain to establish his case for severance charges.

35. The pleadings in the reference application that remaining area has been reduced to a narrow strip of land is neither here nor there. It does not disclose the width of the so called narrow strip of land, neither there is any clarification in that regard by the claimant in his testimony, nor by the valuer of the claimant. The basic facts regarding narrowness of the strip and on that ground the same being rendered useless have to be disclosed in the application itself so that, the respondent can get fair opportunity to meet the case of

the claimant regarding the claim for severance charges. Not only that, the claimant did not plead necessary and basic facts in that regard, even when the matter reached the stage of recording of evidence, no efforts were made to clarify or establish the factual situation in loco, or to prove as to how the claimant would be entitled for severance charges.

36. As regards the testimony of the valuer, it is of no assistance to the claimant. The valuer speaks of residential scheme to have been drawn by the claimant. However, the claimant himself does not speak about the same. Undoubtedly, claimant had sought permission for conversion of use of land after issuance of notification under section 4. Obviously even assuming that there was a plan for residential scheme drawn by the claimant, it was eventually after issuance of notification under section 4 and perhaps even after the declaration under section 6. It is to be noted that the declaration under section 6 was issued on 6.6.81. Hardly six or seven weeks after the grant of permission for conversion for use of land. It is also to be noted that apart from the claim of drawing of residential scheme, no material is produced on record to disclose any such efforts having being made by the claimant prior to issuance of

notification under section 4 or 6 of the said Act.

37. There is no evidence to show that the remaining land of 14350 sq/mtrs had been rendered useless, or to prove that it was or is of no use for implementing the so called residential scheme which was allegedly drawn by the claimant. In fact the valuer nowhere discloses any efforts on the part of the claimant to draw the residential scheme in the area of 14350 sq/mtrs . There is no explanation as to why such scheme was not feasible or viable in the said area of the land. Mere claim that no such scheme was viable does not amount to cogent evidence to prove that such land having being rendered useless to claimant. All these observations are also to be read alongwith earlier observations that such land could not have been utilised for any purpose other than agriculture. There is also no whisper about inability of claimant to use the remaining land for agriculture purposes. In the circumstances, there is absolutely no evidence to justify the claim for severance charges. Being so, the state is justified in contending that the reference court acted arbitrarily in granting severance charges for the area 14350 sq.mtrs. Indeed a bare perusal of the award discloses total non application of mind by the reference court on the issue of severance

charges. Neither the reference court has considered the fact that the claimant has not produced any evidence in that regard, nor the fact that whatever evidence produced nowhere justifies the claim of the claimant that the remaining land to have been rendered useless or that the it is reduced to a narrow strip of land. Hence the claim of claimant for severance charges can not be sustained.

38. As regards the contention that the market value of the land acquired is the fundamental right of the owner in view of second proviso to Article 31 A of the constitution, the same to be rejected as totally devoid of substance . The acquisition in the case in hand is for public purpose under the provisions of the said Act and not as a part of agrarian reform. The Apex Court while rejecting similar contention in **K.S.Paripoornan versus State of Kerala reported in AIR 1995 SC 1012,** had held that as pointed out in **Atma Ram versus State of Punjab 1959 Supp (1) SCR = AIR 1959 SC 519** the object underlying Article 31 A is to facilitate agrarian reform and it extends protection to laws bringing about such reforms. The said Act is not a law relating to agrarian reform as contemplated in Article 31 A of the Constitution. It is preconstitutional legislation which was saved by sub-clause (a) of clause (2) of Article 31

of the Constitution. The second proviso to clause (1) of Article 31 A is, therefore, of no help to the claimant in relation to the land acquired under the said Act for public purpose and the law in that regard is well settled by the said decision of the Apex Court.

39. Next point which arises is in relation to valuation of the acquired land for the purpose of compensation to be awarded to the claimant. As already stated above, the land is required to be valued as agricultural land on the date of issuance of notification under section 4. Perusal of impugned award discloses that the reference court has enhanced compensation primarily on the ground that the Collector had allowed conversion of land to N.A. use and even the lay out plans were approved. The reference court has proceeded to evaluate the land as if the land is developed suitably for the purpose of construction activities. There is no analysis of the testimony of the claimant or the valuer, even to ascertain whether the land is suitable and legally available for the purpose of construction activities. Merely by referring to certain information stated to have been disclosed by the valuer about the land in nearby locality, the reference court has proceeded to hold that the Panvel city is just 10

kilometres away from valuos, CIDCO leased out commercial plots at the rate of Rs.1873/- per sq.mtr. in 1984 and further that in land acquisition reference No. 357/86 district court had awarded the land rate at the rate of Rs.200/- per square metre and that the valuer had valued the land at the rate of 70/- per sq.mtr. Based on that part of testimony of the valuer and referring to the fact that in the year 1982 reference court had awarded compensation to the land in the vicinity to the extent of Rs. 35/- per sq.mtr., same rate has been awarded to the land in question. Obviously it discloses total arbitrariness on the part of reference court and non consideration of the provisions of sections 23 and 24 of the said Act as well as those of the tenancy Act. In each and every land reference when claim for enhancement of compensation is made, the reference court is necessarily expected to adhere to the mandate under the statutory provisions comprised under sections 23 and 24. Total non consideration of these provisions while awarding compensation to the claimant by the reference court, not only discloses irregularity in exercise of jurisdiction on the part of the reference court , but it also discloses arbitrariness and illegality on the part of the reference court as no court is empowered to ignore statutory provisions which apply to the matter which is

required to be adjudicated upon. In the facts and circumstances of the case, therefore, the award passed by the reference court granting the rate of Rs.35/- per sq.mtrs, cannot be sustained and is liable to be quashed.

40. Learned advocate for the claimant, however, drawing attention to Ex. 21 which is an award in Land Reference No.447/87 has submitted that, the same itself justifies grant of compensation not only at Rs.35/- but, even the claim for enhancement of the rate at least to Rs.50/- if not Rs.60/- per sq.mtr. Drawing attention to the said Ex.21 , learned advocate submitted that the same relates to the land in vicinity of the acquired land. The said award was based on two sale deeds of the year 1982 and 1984 wherein, the transaction was at the rate of Rs.45/- and 50/- per sq.mtr. Therein the compensation which was claimed was Rs.70/- but it was awarded for Rs.35/- per sq.mtr. According to the learned advocate though the compensation awarded therein was Rs.35/-, fact that the land transactions at the relevant time were at Rs.45/- and 50/- per sq.mtr., was clearly established and that was not challenged, and that therefore, considering the fact that the acquisition in the case in hand was pursuant to issuance of notification issued in December 1984, certainly the compensation which could be awarded

has to be around Rs.50/- per sq.mtr.

41. As regard to Ex.21, which relates to the award in L.A.R. No. 447 of 1987, undoubtedly, it was produced by the claimant in the course of his testimony. However, apart from producing the said award, neither the claimant nor his witness valuer had taken pain to establish the fact that the land which was the subject matter of the said award, was comparable in all or any respect with the land in question. The Apex Court in series of Judgements have repeatedly held that mere production of any award on record, does not by itself is sufficient, but it is necessary to establish issues of compareability of land. The claimant has to establish that the land which was the subject matter of award, which has already been passed and relied upon and the land in question are comparable if not in all respect , at least in some respect. Unless this fact is established , mere production of award itself, cannot help the claim to justify enhancement of compensation. If any judgement is required in this respect, judgement in the matter of **Cement Corporation of India Limited versus Purya reported in 2004 AIR SCW 5534** can be referred to. Being so , merely because claimant has sought to produce the award Ex. 21, which in turn refers to certain sale instances of the year 1983 and

1984 from the concerned village, that itself would not be cogent evidence to justify the enhancement of market value of the land in question.

42. For reasons stated above, therefore, the appeal filed by the State will have to be allowed and the impugned award is hereby quashed and set aside. Severance charges in favour of claimant need to be quashed and accordingly set aside. Appeal filed by the claimant needs to be dismissed and is accordingly dismissed. No order as to cost.

43. The enhanced amount, if any already paid to the claimant, the same shall be refunded by the claimant within the period of 12 weeks alongwith the interest at the rate of 6% thereof from the date of collection of money. Order accordingly.

(R.M.S.KHANDEPARKAR,J)

(V.M.KANADE,J)